

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

CHARITABLE DAF FUND, L.P. §  
and CLO HOLDCO, LTD., §  
*directly and derivatively,* §  
§  
*Plaintiffs,* §  
§  
v. § CAUSE NO. 3:21-cv-00842-B  
§  
§  
HIGHLAND CAPITAL MANAGEMENT, §  
L.P., HIGHLAND HCF ADVISOR, LTD., §  
and HIGHLAND CLO FUNDING, LTD., §  
*nominally,* §  
§  
*Defendants.* §

**APPENDIX IN SUPPORT OF PLAINTIFF'S RESPONSE TO**  
**HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO DISMISS COMPLAINT**

App'x No.	Description	Bates Range
1	Declaration of Mazin A. Sbaiti	APP_0001 - 0005
2	Excerpts from Transcript of Hearing of Application to Employ James P. Seery, Jr. on July 14, 2020	APP_0006 - 0017
3	Highland CLO Funding - Members Agreement Relating to the Company	APP_0018 - 0045
4	HarbourVest Settlement Agreement	APP_0040 - 0058
5	Order Approving Debtor's Settlement with HarbourVest	APP_0065 - 0087

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

<b>CHARITABLE DAF FUND, L.P.</b>	§
<b>and CLO HOLDCO, LTD.,</b>	§
<i>directly and derivatively,</i>	§
 <i>Plaintiffs,</i>	§
 v.	§ CAUSE NO. 3:21-cv-00842-B
 <b>HIGHLAND CAPITAL MANAGEMENT,</b>	§
<b>L.P., HIGHLAND HCF ADVISOR, LTD.,</b>	§
<b>and HIGHLAND CLO FUNDING, LTD.,</b>	§
<i>nominally,</i>	§
 <i>Defendants.</i>	§

**DECLARATION OF MAZIN A. SBAITI**

1. My name is Mazin A. Sbaiti. I am over twenty-one years old and fully competent in all respects to make this Declaration.

2. I am a partner at Sbaiti & Company PLLC, and am admitted in good standing in this Court. I represent Plaintiffs Charitable DAF Fund, L.P. and CLO Holdco, Ltd. in this matter. The facts stated in this Declaration are based on my personal knowledge and made under penalty of perjury.

3. Exhibit 1 is a true and correct copy of excerpts from a Transcript of the July 14, 2020 Hearing before the Northern District of Texas Bankruptcy Court, in the *In Re Highland Capital Management, LP*, Cause No. 19-34054-sgj11.

4. Exhibit 2 is a true and correct copy of the Highland CLO Funding Members Agreement Relating to the Company, executed on

5. Exhibit 3 is a true and correct copy of the HarbourVest Settlement Agreement, entered into between Highland Capital Management and the various Harbourvest entities in the bankruptcy.

6. Exhibit 4 is a true and correct copy of the Order Approving Settlement with Harbourvest under Rule 9019 (the “2019 Order”).

Executed on June 29, 2021.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 ) **Case No. 19-34054-sgj11**  
5 In Re: )  
6 )  
7 HIGHLAND CAPITAL ) Dallas, Texas  
8 MANAGEMENT, L.P., ) July 14, 2020  
9 ) 1:30 p.m. Docket  
10 Debtor. )  
11 ) APPLICATIONS TO EMPLOY JAMES  
12 ) P. SEERY AND DEVELOPMENT  
13 ) SPECIALISTS, INC. (774, 775)  
14 )  
15 )

16 TRANSCRIPT OF PROCEEDINGS  
17 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
18 UNITED STATES BANKRUPTCY JUDGE.

19 WEBEX/TELEPHONIC APPEARANCES:

20 For the Debtors: Jeffrey N. Pomerantz  
21 PACHULSKI STANG ZIEHL & JONES, LLP  
22 10100 Santa Monica Blvd.,  
23 13th Floor  
24 Los Angeles, CA 90067  
25 (310) 277-6910

21 For the Debtors: John A. Morris  
22 Greg Demo  
23 PACHULSKI STANG ZIEHL & JONES, LLP  
24 780 Third Avenue, 34th Floor  
25 New York, NY 10017-2024  
26 (212) 561-7700

21 For the Debtors: Ira D. Kharasch  
22 PACHULSKI STANG ZIEHL & JONES, LLP  
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24 13th Floor  
25 Los Angeles, CA 90067-4003  
26 (310) 277-6910

21 For the Debtors: Zachery Z. Annable  
22 Melissa S. Hayward  
23 HAYWARD & ASSOCIATES, PLLC  
24 10501 N. Central Expressway,  
25 Suite 106  
26 Dallas, TX 75231  
27 (972) 755-7104

Seery - Direct

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1 matter as well as financing in distressed matters during that  
2 time.

3 In 1999, I went to the business side and I began to manage  
4 distressed assets at Lehman Brothers as well as a leverage  
5 finance business. That grew into my running the risky finance  
6 business as well as the loan business at Lehman globally,  
7 which included high-grade loans, high-yield loans, trading and  
8 sales of those products, a big part of distressed, all of  
9 restructuring, all of asset management, and all of the hedging  
10 of the portfolio that we had.

11 From there, I left Lehman with a small group and sold it  
12 to Barclay's. I moved on and ran a hedge fund with two former  
13 partners of mine who are the founding partners called River  
14 Birch Capital. It was a long-short credit fund; mostly  
15 credit, though we did structured finance as well, and we also  
16 handled some equities.

17 Q Okay. Let's spend a few minutes, as a preview, talking  
18 about the Debtor and its business. And let's start with the  
19 basics. Is there a way you can summarize the business of the  
20 Debtor?

21 A I think, from a high level, the best way to think about  
22 the Debtor is that it's a registered investment advisor. As a  
23 registered investment advisor, which is really any advisor of  
24 third-party money over \$25 million, it has to register with  
25 the SEC, and it manages funds in many different ways.

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17

1       The Debtor manages approximately \$200 million current  
2 values -- it was more than that at the start of the case -- of  
3 its own assets. It doesn't have to be a registered investment  
4 advisor for those assets, but it does manage its own assets,  
5 which include directly-owned securities; loans from mostly  
6 related entities, but not all; and investments in certain  
7 funds which it also manages.

8       In addition, the Debtor manages about roughly \$2 billion  
9 in -- \$2 billion in total managed assets, around \$2 billion in  
10 CLO assets, and then other entities, which are hedge funds or  
11 PE style.

12       In addition, the Debtor provides shared services for  
13 approximately \$6 billion of assets. Those are assets that are  
14 owned by related entities but not owned by Debtor-owned or  
15 managed entities. And those are a combination of back office  
16 services, which include timely reporting, asset management,  
17 legal and compliance support, trading and research support,  
18 but not the actual management of the assets.

19       The Debtors run -- and I think the way to think about it  
20 is on a functional basis; at least, that's the way I think  
21 about it -- and there's really six areas. There's corporate  
22 management; finance, accounting and tax; trading and research;  
23 private equity and fund investing; compliance and legal; and  
24 then structured equity, which really includes all of the CLO  
25 businesses.

Seery - Direct

18

1       The goals of the Debtor generally are what you'd expect  
2 out of an asset manager. A little bit different than most  
3 because the Debtor does own assets, which is a little  
4 different than when money asset managers typically hold assets  
5 away from the asset manager. But number one, discharge  
6 Highland's, which I'll call Highland (inaudible), LP, duties  
7 to investors in the funds. Those are fiduciary duties under  
8 the Investment Advisors Act. Each day, you've got to make  
9 sure that you do that first and foremost.

10      Number two, create positive MPD in each of the funds that  
11 we manage, either through sales, purchases, or hedging.

12      Next, make sure that we report timely finances of our own  
13 assets, including in the funds, but also, to the third-party  
14 investors. Maximize the value of HCMLP's owned assets. And  
15 then operate as efficiently as possible for the lowest cost.

16      That's essentially how the Debtor -- how we think about  
17 the Debtor from a functional perspective. It's got about 70  
18 employees laid out in those areas that I mentioned, and each  
19 of those employees every day usually think about those goals  
20 and try to discharge their duties by focusing on those goals.

21 Q      Thank you, Mr. Seery. And can you describe for the Court  
22 how those 70 or so employees are organized? Is there an  
23 internal corporate structure that you're working with?

24 A      Yeah. The way -- the way -- I apologize. The way we  
25 think about it is, as I said, corporate management, which is

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1 really HR and overseeing the function that it's filling every  
2 day, that's been really -- because Mr. Dondero was removed  
3 from management. It used to all roll up to him. That's been  
4 effectively rolling up to me since February.

5 Finance, accounting, and tax. Each of these businesses  
6 every day require certain amounts of liquidity. Each of them  
7 have requirements that they have to pay out to investors.  
8 Each of them have expenses. And all of them have different  
9 kinds of tax either obligations or reporting. Those are  
10 managed by Frank Waterhouse as the CFO. (inaudible), sorry.

11 Trading and research. With respect to the assets, they're  
12 not -- they're not static assets. Many of them do get traded  
13 on a regular basis. A gentleman, Joe Sowin, heads up the  
14 trading of the liquid assets. John Povish (phonetic) heads up  
15 the research and the trading of the more illiquid assets, but  
16 not PE. In addition, we have PE assets that require some  
17 management every day, including Board seats. That's a  
18 gentleman by the name of Cameron Baynard, and also he will  
19 fund investments in that area. J.P. Sevilla is responsible  
20 for working with Cameron on those investments and leading that  
21 team.

22 Importantly, because of the nature of what the Debtor  
23 does, the fiduciary obligations, as well as the  
24 responsibilities to each investor and the legal overlay, we  
25 have a robust compliance and legal department. That's headed

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1 by Thomas Surgent and Scott Ellington. Scott: more focused  
2 on transactional issues with respect to legal. He is actually  
3 general counsel. Everything that has do with compliance, the  
4 interrelatedness of the funds, trading between funds or  
5 positions that are shared across funds, which are many, runs  
6 through Thomas Surgent and his team.

7 And finally, structured equity. Sitting on top of the  
8 structured finance business that we have, understanding those  
9 assets, particularly of two billion-ish assets in CLOs, that's  
10 headed by Hunter Covitz.

11 Q Can you describe for the Court your interaction with each  
12 of the department heads that you just identified?

13 A Well, depending on the nature of the issue each day, I  
14 have at least -- I'd say generally at least weekly contact  
15 with most, often daily contact with most. So, for example,  
16 when there are trading issues, particularly as the market was  
17 extremely volatile with respect to unliquid securities, Joe  
18 Sowin and I were on the phone several times a day.

19 Relating to the COVID issues, Brian Collins, who heads the  
20 HR group, and I were on the phone several times a day.

21 Relating to structured equity, depending on what's  
22 happening with a particular fund or what's happening in loan  
23 prices, I speak to Hunter Covitz. And it goes down the line.

24 So it really depends on each of the areas and what's going  
25 on in the business, but I try to touch base with each of those

Seery - Direct

21

1 department heads on a regular basis.

2 Frank Waterhouse, of course, is at least weekly. We have  
3 a standing call every week to make sure that we're focused on  
4 liquidity, which is always a concern in a Chapter 11, and  
5 Frank and his team are on that call and prepare weekly  
6 materials for us.

7 Q Okay.

8 MR. MORRIS: Your Honor, before I move to the next  
9 area of questions, the work of the Board, I just wanted to see  
10 if the Court had any questions on the corporate organizational  
11 structure, the internal structure of the business, or any of  
12 the matters that Mr. Seery touched on?

13 THE COURT: I do not. And I do have in front of me a  
14 demonstrative aid that Mr. Annable sent over ahead of time, so  
15 I appreciate that as well.

16 MR. MORRIS: Okay. Your Honor, I think Mr. Seery  
17 covered much of what's on that document, but if you'd like him  
18 to go through that, we're happy to do it.

19 THE COURT: No, that's fine.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Then let's shift gears a little bit and start talking  
23 about the work of the Independent Board itself. The  
24 Independent Board was appointed in mid-January; is that right?  
25 A Yeah. It was the first -- January 9th, the first week of

Seery - Direct

22

1 January, and we started working that afternoon.

2 Q Okay. Can you describe for the Court what the -- the  
3 Board's initial focus? What were you focused on?

4 A Well, if you think about the areas that I just mentioned  
5 previously, the Board initially, for lack of a better term,  
6 gang-tackled everything. So we tried to make sure that we had  
7 a broad base of understanding among the three of us with  
8 respect to the business.

9 I, because of my background, had a lot more familiarity  
10 with asset management, these type of asset security  
11 businesses. But we wanted to make sure that each of us was at  
12 least facile with the main areas that we had to understand.  
13 First was operations. How does the company run each day?  
14 Particularly, how was it going to run without Mr. Dondero?  
15 And I went through some of those functional areas and how we  
16 thought about those and who head each of those.

17 Next in the -- I don't mean to say it's second, because  
18 it's always first, but liquidity. What did the Debtors'  
19 liquidity look like? How are we going to manage that  
20 liquidity, not just for the near-term, but also for the  
21 medium-term, and then even into the slightly longer-term? We  
22 had to think about what assets are there, what money those  
23 assets might need that we would have to invest in them, and  
24 whether there was liquidity in those assets that we can create  
25 liquidity in order to fund the Debtors' business.

Seery - Direct

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1        Personnel, we needed a good opportunity to understand who  
2 did what, not just in the senior managers that I mentioned,  
3 but deeper into the staff, because we're going to rely on  
4 those folks. Particularly worked through with DSI.

5        As I mentioned, the Debtor, unlike a lot of other asset  
6 managers, owns a lot of assets. It's a disparate group of  
7 assets, but getting a feel and understanding for what those  
8 assets were, what the critical issues surrounding those assets  
9 are, who managed them day-to-day: We wanted to make sure that  
10 each of the directors had a good (inaudible) and understanding  
11 of those issues that might arise with respect to those assets,  
12 and a good sense of how quickly those issues could, you know,  
13 further arise.

14       We also had to get a very good understanding of each of  
15 the funds that we manage. As I said, the Investment Advisors  
16 Act puts a fiduciary duty on Highland Capital to discharge its  
17 duty to the investors. So while we have duties to the estate,  
18 we also have duties, as I mentioned in my last testimony, to  
19 each of the investors in the funds.

20       Now, some of them are related parties, and those are a  
21 little bit easier. Some of them are owned by Highland. But  
22 there are third-party investors in these funds who have no  
23 relation whatsoever to Highland, and we owe them a fiduciary  
24 duty both to manage their assets prudently but also to seek to  
25 maximize value. And we wanted to make sure we had a good

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1 understanding of that.

2 Finally, with respect to the shared service arrangements,  
3 we needed to get an understanding of that \$6 billion in assets  
4 and how our business, HCMLP, worked with those -- those shared  
5 service counterparties and exactly who did what for whom.  
6 It's very complicated because it had been run much more on a  
7 functional basis than on a line basis from each contract. So  
8 it's not as if your employees are allocated to NexBank. It's  
9 the whole panoply of businesses that we enter into, and  
10 providing those services to NexBank, not through a central  
11 point but through whatever requests come in from the counter-  
12 parties. So we needed a good understanding of what those  
13 contracts looked and what those obligations were.

14 A VOICE: John, you're on mute.

15 MR. MORRIS: Thank you.

16 BY MR. MORRIS:

17 Q All of that work was going on in the first weeks of the  
18 appointment of the Board?

19 A Yeah, it would not be fair to say we could do that in a  
20 couple weeks. So it took far longer than that. But that  
21 didn't mean that issues didn't start to arise immediately in  
22 February. And so, while we were learning, we were also  
23 starting to get a feel for different things that could happen  
24 in the company.

25 As in many companies, immediately, one of the first things

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1 you have to deal with is, particularly at the beginning of the  
2 year, what does compensation look like; who are the -- what do  
3 promotions look like; are you going to be able to hold this  
4 team together to service these assets? And yeah, we had that,  
5 with an additional wrinkle that Highland's payment structure  
6 defers a significant amount of compensation to its employees,  
7 and it vests over time, and it has the very typical provision  
8 that if you are not there when it vests -- when it is going to  
9 be paid, actually, not when it vests. Even if you're vested,  
10 if you're not there when it gets paid, you're not entitled to  
11 it. And so understanding who was owed what; how the vesting  
12 worked; what the compensation structure looked like compared  
13 to third parties, was one of the first things we had to do.  
14 And Highland has an extremely robust review process. Brian  
15 Collins manages it. It's first-rate. It goes through both  
16 360 in terms of what other employees think of each other as  
17 well as bottoms up, in terms of performance. And then it has  
18 a top-down component, which ultimately ran through Mr.  
19 Dondero. Since he was effectively removed from that role, the  
20 Board had to jump in and get a full understanding with Brian  
21 about what the process looked like; how it was going to work;  
22 how it compared to other firms; and whether we could go  
23 forward with it. And that was one of the motions that was  
24 brought early to the Court.

25 A Let's talk a minute about the transactional work that the

1 yesterday counsel for Mr. Dondero filed a joinder in the  
2 Debtors' objection to Acis's claim. So, again, just thinking  
3 about this in the context of mediation, I think, with that  
4 joinder, they will be a necessary party. So, going back to  
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in  
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing  
12 further, we'll see you on the 21st. And, again, my courtroom  
13 deputy may be reaching out before then if we've got things  
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oOo--

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CERTIFICATE

21

I certify that the foregoing is a correct transcript to  
the best of my ability from the electronic sound recording of  
the proceedings in the above-entitled matter.

22

/s/ **Kathy Rehling**

07/16/2020

23

24

Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

25 Date

Between  
CLO HOLDCO, LTD.  
And  
HARBOURVEST DOVER STREET IX INVESTMENT L.P.  
And  
HARBOURVEST 2017 GLOBAL AIF L.P.  
And  
HARBOURVEST 2017 GLOBAL FUND L.P.  
And  
HV INTERNATIONAL VIII SECONDARY L.P.  
And  
HARBOURVEST SKEW BASE AIF L.P.  
And  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
And  
LEE BLACKWELL PARKER, III  
And  
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311  
And  
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811  
And  
QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612  
And  
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211  
And  
HIGHLAND CLO FUNDING, LTD.  
And  
HIGHLAND HCF ADVISOR, LTD.

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MEMBERS AGREEMENT RELATING TO THE COMPANY

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THIS AGREEMENT is made the 15th day of November 2017

BETWEEN

- (1) CLO HOLDCO, LTD. whose registered office address is at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands;
- (2) HARBOURVEST DOVER IX INVESTMENT L.P. of c/o HarbourVest Partners, LLC, One Financial Center, 44<sup>th</sup> Floor, Boston, MA 02111, USA
- (3) HARBOURVEST 2017 GLOBAL AIF L.P. of c/o HarbourVest Partners, LLC, One Financial Center, 44<sup>th</sup> Floor, Boston, MA 02111, USA
- (4) HARBOURVEST 2017 GLOBAL FUND L.P. of c/o HarbourVest Partners, LLC, One Financial Center, 44<sup>th</sup> Floor, Boston, MA 02111, USA
- (5) HV INTERNATIONAL VIII SECONDARY L.P. of c/o HarbourVest Partners, LLC, One Financial Center, 44<sup>th</sup> Floor, Boston, MA 02111, USA
- (6) HARBOURVEST SKEW BASE AIF L.P. of c/o HarbourVest Partners, LLC, One Financial Center, 44<sup>th</sup> Floor, Boston, MA 02111, USA
- (7) HIGHLAND CAPITAL MANAGEMENT, L.P. of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (8) LEE BLACKWELL PARKER, III of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (9) QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311 of 17171 Park Row #100, Houston, Texas 77084, USA
- (10) QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811 of 17171 Park Row #100, Houston, Texas 77084, USA
- (11) QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612 of 17171 Park Row #100, Houston, Texas 77084, USA
- (12) QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211 of 17171 Park Row #100, Houston, Texas 77084, USA

(together the "Members") and

- (13) HIGHLAND CLO FUNDING, LTD., with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "Company") and
- (14) HIGHLAND HCF ADVISOR, LTD., whose registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "Portfolio Manager").

WHEREAS:

- (A) The Company is a limited company incorporated under the laws of the Island of Guernsey on 30 March 2015.
- (B) The Company has been established to provide its investors with exposure to CLO Notes on both a direct basis and indirect basis and senior secured loans on an indirect basis, through the use of the investments described in its investment policy as set forth in the Offering Memorandum dated 15 November 2017, the (the "Offering Memorandum"), subject to the restrictions set forth therein.

- (C) The Members are the owners of the entire issued capital of the Company.
- (D) The Parties are entering into this Agreement to regulate the relationship between them and the operation and management of the Company.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

In this Agreement, including the Schedule:

- 1.1 the following words and expressions shall have the following meanings, unless they are inconsistent with the context:

"Adherence Agreement" means the agreement under which a person agrees to be bound by the terms of this Agreement in the form substantially similar as set out in the Schedule;

"Advisers Act" shall mean the U.S. Investment Advisers Act of 1940, as amended from time to time, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder;

"Affiliate" means, with respect to a person, (i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person or (ii) any other person who is a director, officer or employee (a) of such person, (b) of any subsidiary or parent company of such person or (c) of any person described in clause (i) above. For the purposes of this definition, control of a person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such persons or (ii) to direct or cause the direction of the management and policies of such person whether by contract or otherwise. For purposes of this definition, the management of an account by one person for the benefit of any other person shall not constitute "control" of such other person and no entity shall be deemed an "Affiliate" of the Company solely because the administrator or its Affiliates serve as administrator or share trustee for such entity;

"Agreement" means this agreement together with the Schedule;

"Articles" means the articles of incorporation of the Company as amended from time to time;

"Business" means the business of the Company as described in Recital (B);

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for ordinary banking business in Guernsey;

"Directors" means the directors of the Company from time to time;

"CLO Holdco" means CLO Holdco, Ltd. (or any permitted successor to the business of CLO Holdco, Ltd. or interest in the Company);

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Directors" means the directors of the Company from time to time;

"Dover IX" means HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or any interest in the Company);

"DOL" shall mean the U.S. Department of Labor, or any governmental agency that succeeds to the powers and functions thereof.

"DOL Regulations" shall mean the regulations of the DOL included within 29 C.F.R. section 2510.3-101.

"Dover IX" shall mean HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or interest in the Company);

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time;

"ERISA Member" shall mean a Member that (a) is a "benefit plan investor" (as such term is defined in the DOL Regulations as modified by section 3(42) of ERISA) subject to the fiduciary responsibility provisions of part 4 of title I of ERISA or is a "plan" (as such term is defined in section 4975(e) of the Code) subject to section 4975 of the Code or (b) is designated as an ERISA Member by the General Partner in writing on or before the date at which such ERISA Member is admitted to the Company;

"HarbourVest Entities" means: Dover IX; HarbourVest 2017 Global AIF L.P.; HarbourVest 2017 Global Fund L.P.; HV International VIII Secondary L.P.; and HarbourVest Skew Base AIF L.P. (or any of their respective permitted successors to their businesses or interests in the Company);

"Highland Principals" means: Highland Capital Management, L.P.; Lee Blackwell Parker, III, Quest IRA, Inc., fbo Lee B. Parker III Acct. # 3058311; Quest IRA, Inc., fbo Hunter Covitz Acct. # 1469811; Quest IRA, Inc., fbo Jon Poglitsch Acct. # 1470612; Quest IRA, Inc., fbo Neil Desai Acct. # 3059211 (or any of their respective permitted successors to their businesses or interests in the Company);

"Law" means the Companies (Guernsey) Law, 2008, as amended;

"Member" means a person whose name is from time to time entered in the register of members of the Company as the holder of shares in the Company;

"Parties" means the parties to this Agreement and any other person who agrees to be bound by the terms of this Agreement under an Adherence Agreement;

"Shares" means ordinary shares in the Company;

"Subsidiary" shall have the meaning ascribed to it in the Law;

"Subscription and Transfer Agreement" means the Subscription and Transfer Agreement, dated as of 15 November 2017, entered into by and among CLO HoldCo, Ltd. and each of the Members and acknowledged and agreed by the Company and the Portfolio Manager.

Any capitalized terms used herein without definition have the meanings specified in the Offering Memorandum.

- 1.2 any reference to the Parties being obliged to procure shall so far as they are able includes, without limitation, procuring by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company;
- 1.3 any reference to a person includes, where appropriate, that person's heirs, personal representatives and successors;
- 1.4 any reference to a person includes any individual, body corporate, corporation, firm, unincorporated association, organisation, trust or partnership;
- 1.5 any reference to time shall be to Guernsey time;
- 1.6 except where the context otherwise requires words denoting the singular include the plural and vice versa and words denoting any one gender include all genders;

1.7 unless otherwise stated, a reference to a Clause or a Schedule is a reference to a Clause or a Schedule to this Agreement; and

1.8 Clause headings are for ease of reference only and do not affect the construction of any provision.

## 2. THE BUSINESS OF THE COMPANY

2.1 The Parties hereby agree that the objects and purpose of the Company shall be to carry on the Business.

2.2 The Parties shall so far as they are able (including without limitation by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company) procure that (i) the Company's principal activities shall be the pursuit of the objects and purposes described in Clause 2.1 conducted in accordance with the provisions hereof and with the Offering Memorandum, the Subscription and Transfer Agreement and Articles of the Company and (ii) the Parties shall not take any action inconsistent with the provisions of the Offering Memorandum, including, without limitation the investment strategy set forth in the "Summary" and the applicable restrictions during and after the Investment Period and the suspension or termination of the Investment Period following a Key Person Event.

2.3 The Members shall (so long as they hold shares in the capital of the Company) use all reasonable endeavours to promote and develop the Business of the Company.

## 3. VOTING RIGHTS

3.1 The Parties agree that the following provisions of this Clause 3 shall apply during such period or periods as the Members parties hereto are Members.

3.2 The Parties shall procure that the Company shall not take any action at any meeting requiring the sanction of an ordinary or special resolution or by written resolution, in each case of the Directors or of the Members, without the affirmative vote or prior written consent, as applicable, of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company, including, but not limited to, the following actions:

3.2.1 any issuance of new shares of the Company or a new class of shares of the Company or payment of any dividend by issuance of new shares of the Company, other than issuances of Shares pursuant to the Offering Memorandum and the Subscription and Transfer Agreement;

3.2.2 any alteration or cancellation of any rights of any Shares or of the Share capital of the Company,

3.2.3 any conversion or redemption of Shares, except pursuant to Clause 5.5,

3.2.4 any payment of commission in consideration for subscribing or agreeing to subscribe for any shares in the Company,

3.2.5 the creation of any lien on any Shares, except pursuant to the remedies in Clause 5.3. or

3.2.6 the suspension of the calculation of the NAV; other than a temporary suspension of the calculation of the NAV and NAV per Share by the Board of Directors during any period if it determines in good faith that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any market on which the Company's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs, including as a result of political, economic, military or monetary events or any circumstances outside the control of the Portfolio Manager or the Company, as a result of which,

in the reasonable opinion of the Portfolio Manager, the determination of the value of the assets of the Company, would not be reasonably practicable or would be seriously prejudicial to the Members taken as a whole; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Company's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Company cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Portfolio Manager, be effected at normal rates of exchange; or (v) automatically upon liquidation of the Company.

4. ADVISORY BOARD.

- 4.1 Composition of Advisory Board. The Company shall establish an advisory board (the "Advisory Board") composed of two individuals, one of whom shall be a representative of CLO Holdco and one of whom shall be a representative of Dover IX (or, in each case, or any permitted successor to the interest in the Company of such Member). No voting member of the Advisory Board shall be a controlled Affiliate of the Portfolio Manager (including, for the avoidance of doubt, following a permitted transfer of CLO Holdco's interest to an Affiliate of the Portfolio Manager, if applicable), it being understood that for the purposes of this sentence none of CLO Holdco, its wholly-owned subsidiaries nor any of their respective directors or trustees shall be deemed to be a controlled Affiliate of the Portfolio Manager due to their pre-existing non-discretionary advisory relationship with the Portfolio Manager. None of the members of the Advisory Board shall receive any compensation (other than reimbursement for reasonable and documented out-of-pocket expenses) in connection with their position on the Advisory Board. The Company shall bear any fees, costs and expenses related to the Advisory Board.
- 4.2 Meetings of Advisory Board; Written Consents. The Advisory Board shall meet with the Portfolio Manager at such times as requested by the Portfolio Manager from time to time. The quorum for a meeting of the Advisory Board shall be all of its members entitled to vote. All actions taken by the Advisory Board shall be (i) by a unanimous vote of all of the members of the Advisory Board in attendance in a meeting at which a quorum is present and entitled to vote and not abstaining from voting or (ii) by a written consent in lieu of a meeting signed by all of the members of the Advisory Board entitled to consent and not abstaining from consenting. Meetings of the Advisory Board may be held in person, by telephone or by other electronic device.
- 4.3 Functions of Advisory Board. The Advisory Board shall provide (or determine not to provide) any consents or approvals expressly contemplated by this Agreement and the Offering Memorandum to be provided by the Advisory Board and, at the request of the Portfolio Manager in its sole discretion, provide general advice (which, for the avoidance of doubt, shall be non-binding) to the Portfolio Manager or the Company with regard to Company activities and operations and other matters. For the avoidance of doubt, no consent or approval of the Advisory Board shall be required for any action or determination expressly permitted or contemplated hereunder or in the Offering Memorandum and not conditioned on such a consent or approval. The Portfolio Manager shall not act contrary to the advice of the Advisory Board with respect to any action or determination expressly conditioned herein or in the Offering Memorandum on the consent or approval of the Advisory Board. Without limiting the foregoing, the Advisory Board shall be authorized to give any approval or consent required or deemed necessary or advisable under the Advisers Act on behalf of the Company and the Members, including under Section 206(3) of the Advisers Act. The Portfolio Manager may from time to time in its discretion request the Advisory Board to review and ratify certain Company matters. The consent of the Advisory Board shall be required to approve the following actions: (i) any extension of the Investment Period; (ii) any extension of the Term (other than an automatic extension following an extension of the Investment Period that has been approved by the Advisory Board); (iii) any allotment of additional equity securities by the Company; and (iv) any investment in a Related Obligation or any other transaction between the Company or any entity in which the Company holds a direct or indirect interest, on the one hand, and Highland or any of its Affiliates, on the other hand and (v) other matters as set forth in the Offering

Memorandum. Notwithstanding the foregoing or anything to the contrary set forth herein, no transaction that is specifically authorized in the governing documents of the Company shall require approval of the Advisory Board, including, without limitation, sales or securitizations of all or a portion of the Company's loan portfolio into new Qualifying CLOs (i.e. the transfer of warehoused assets into new Qualifying CLOs), investments in CLO Notes issued by CLOs managed by Highland Affiliates, and the NexBank Credit Facility and any Permitted NexBank Credit Facility Amendments, in each case as described in the Offering Memorandum. Any such approval, consent or ratification given by the Advisory Board shall be binding on the Company and the Members. Neither the Advisory Board nor any member thereof shall have the power to bind or act for or on behalf of the Company in any manner, and no shareholder who appoints a member of the Advisory Board shall be deemed to be an Affiliate of the Company or Highland solely by reason of such appointment.

- 4.4 Term of Members of Advisory Board. A member of the Advisory Board shall be deemed removed from the Advisory Board (i) if such member is no longer an officer, director, manager, trustee, employee, consultant or other representative of CLO Holdco or Dover IX, as applicable, or their respective Affiliates and shall be replaced as soon as practicable with a representative of CLO Holdco or Dover IX, or their respective Affiliates, as applicable, or (ii) if the Member represented by such member either becomes a Defaulting Member or such member ceases to be eligible to represent such Member pursuant to Clause 4.1.
- 4.5 No Duties to Other Members. No Advisory Board member who is the representative of any Member shall, to the extent permitted by law, owe a fiduciary duty to the Company or any other Member (other than the duty to act in good faith), and may, to the fullest extent permitted by law, in all instances act in such member's own interest and in the interest of the Member that appointed such member.

## 5. DEFAULTING MEMBERS

- 5.1 In the event any Member defaults in its obligation to pay the full amount of the purchase price of Shares called for settlement under the Subscription and Transfer Agreement on the applicable Settlement Date (such unpaid amount, an "Outstanding Settlement Amount"), the Portfolio Manager, on behalf of the Company, shall provide written or telephonic notice of such default to such Member. If such default is not cured within 5 business days after written (or if applicable telephonic or email) notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member, such Outstanding Settlement Amount shall automatically accrue interest on a retroactive basis from the date such Outstanding Settlement Amount was due at 12% (the "Default Interest Rate") (which interest, once paid, shall not be applied to the purchase of the unsettled Shares of such Member, but which will upon receipt be distributed pro rata to those Members who have funded any such Outstanding Settlement Amounts pursuant to this Clause 5). No such Shares which have failed to be settled will be issued to any Member until settlement of the full amount of the purchase price has been made. In addition, if such default is not cured within 10 business days after written or telephonic notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member (a "Defaulting Member"), the following provisions shall apply:
  - 5.2 Whenever the vote or consent of the Defaulting Member would otherwise be required or permitted hereunder or under the Articles, the Defaulting Member shall not be entitled to participate in such vote or consent in respect of his existing shareholding and with respect to any representative of such Defaulting Member on the Advisory Board, and such vote or consent shall be calculated as if such Defaulting Member were not a Member and, as applicable, any representative of such Defaulting Member on the Advisory Board were not a member of the Advisory Board.
  - 5.3 The Portfolio Manager, on behalf of the Company, may pursue and enforce all rights and remedies available, including the commencement of legal proceedings against the Defaulting Member to collect the Outstanding Settlement Amounts, together with interest thereon for the account of the Company from the date due at the Default Interest Rate, plus the costs and expenses of collection (including attorneys' fees and expenses).

- 5.4 The Portfolio Manager, on behalf of the Company, may (at the sole cost of the Defaulting Member) borrow funds from any person (other than the Defaulting Member or its Affiliates) to cover such shortfall and/or advance all or a portion of the Defaulting Member's Outstanding Settlement Amount to the Company on behalf of the Defaulting Member, and such advance shall be repaid by the Defaulting Member to the Portfolio Manager, on behalf of the Company, with interest for the account of the Portfolio Manager, on behalf of the Company, on the amount outstanding from time to time commencing on the date of the advance at the Default Interest Rate. To the extent the Portfolio Manager, on behalf of the Company, advances funds to the Company on behalf of a Defaulting Member, all distributions from the Company that would otherwise be made to the Defaulting Member shall be paid to the Portfolio Manager, on behalf of the Company, (with any such amounts being applied first against accrued but unpaid interest and then against principal), until all amounts payable by the Defaulting Member to the Portfolio Manager, on behalf of the Company, under this Clause 5.4 (including interest) have been paid in full.
- 5.5 The Portfolio Manager, on behalf of the Company, may elect, upon notice to the Defaulting Member, to redeem the Defaulting Member's shares in an amount equal to 50% of the outstanding amount existing as of the date of the default at a price of \$0.0001 per Share. Thereupon, the commitment of the Defaulting Member under the Subscription and Transfer Agreement shall be zero, the Defaulting Member shall not be obligated to make any further settlements, the voting capital of such Defaulting Member and of each other Member shall be re-determined as of the date of such default to reflect the new commitment of the Defaulting Member, and the Portfolio Manager shall revise the books and records of the Company to reflect the reduction of the commitment of the Defaulting Member. The Members agree (x) that the damages suffered by the Company as the result of a failure by a Member to settle a commitment to purchase Shares that is required by this Agreement cannot be estimated with reasonable accuracy and (y) that the foregoing provisions of this Clause 5.5 shall act as liquidated damages for the default by the Defaulting Member (which each Member hereby agrees are reasonable).
- 5.6 The Board may offer to the non-Defaulting Members (pro rata in accordance with their respective Commitments) the option of purchasing the Defaulting Member's unsettled Shares on the terms set forth in the applicable Settlement Notice (as defined in the Subscription and Transfer Agreement).
- 5.7 At the election of the Board, distributions of dividends otherwise payable to the Defaulting Member under the Articles shall not be paid to the Defaulting Member, but instead shall be applied against the amount of the Outstanding Settlement Amount (plus interest at the Default Interest Rate and related costs); provided that any amounts so applied shall be deemed to have been distributed to the Defaulting Member under the Articles.
- 5.8 The Portfolio Manager may send an amended or new Settlement Notice to the Members other than the Defaulting Member in an amount equal to the Defaulting Member's Outstanding Settlement Amount and otherwise in accordance with the Subscription and Transfer Agreement.
- 5.9 Each Defaulting Member further appoints the Portfolio Manager as agent and attorney-in-fact for the Defaulting Member and hereby grants to the Portfolio Manager an irrevocable power of attorney to take all actions necessary on its behalf to sell, assign, or transfer the commitment to purchase unsettled Shares of such Defaulting Member pursuant to Clause 5.6 or as necessary on its behalf to effect the other remedies or rights set forth in this Clause 5; provided that the Portfolio Manager shall not bind any Defaulting Member to an indemnification or other similar obligation which guarantees the financial performance of the Company or which exceeds the ability of the Defaulting Member to provide indemnification under applicable law.

## 6. TRANSFERS OR DISPOSALS OF SHARES

- 6.1 No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio

Manager, which consent shall be in the sole discretion of the Portfolio Manager; provided that no such Transfer shall be made unless in the opinion of counsel reasonably satisfactory to the Portfolio Manager (who may be counsel for the Company, and which requirement for an opinion may be waived, in whole or in part, in the sole discretion of the Portfolio Manager) that:

- 6.1.1 such Transfer would not require registration under the Securities Act or any state securities or "Blue Sky" laws or other laws applicable to the Shares to be assigned or transferred and is conducted in conformance with the restrictions set forth in the Offering Memorandum;
- 6.1.2 such Transfer would not be reasonably likely to cause the Company to be subject to tax in any jurisdiction other than of its incorporation on a net income basis, not be reasonably likely to cause the Company to become subject to registration as an investment company under the Investment Company Act of 1940, as amended;
- 6.1.3 such Transfer would not cause the Company to be considered to be an entity whose underlying assets are considered to include "plan assets" by reason of investment by an "employee benefit plan" or "plan" in such entity pursuant to the U.S. Plan Assets Regulations; and
- 6.1.4 such sale, assignment, disposition or transfer would not cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or the Code.

6.2 Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal) a Member must first offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter. The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred. If the other Members do not accept the offer, the Member may (subject to complying with the other Transfer restrictions in this Agreement) Transfer the applicable Shares that such Members have not elected to purchase to a third party at a price equal to or greater than the price described in the offer letter, provided that if the Member has not (a) entered into a definitive agreement to effect such sale within 90 days after the expiration of the period that the other Members have to accept the offer in the offer letter or (b) consummated the sale within 120 day after the entry into the definitive agreement to consummate the sale, it must comply with these right of first refusal procedures again. Any Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to any other Member (subject to complying with the other Transfer restrictions in this Agreement), any initial Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to an Affiliate (subject to complying with the other Transfer restrictions in this Agreement), and CLO Holdco and the Highland Principals (unless such Member is the Member proposing the Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to Highland, an Affiliate of Highland or other Highland Principals (subject to complying with the other Transfer restrictions in this Agreement).

6.3 No Highland Principal may transfer his or its interests in the Company other than (i) to a trust or other tax or estate planning vehicle or (ii) to the Portfolio Manager, its Affiliates or another Highland Principal upon the termination of such Highland Principal's (or the beneficial owner of such Highland Principal, if applicable) employment by Highland Capital Management, L.P.

6.4 Any transferor of any Share shall remain bound by the terms of this Agreement applicable to it prior to such transfer and that nothing in this Agreement shall constitute a waiver of any rights a Party to this Agreement may have by reason of a breach of this Agreement by a transferor prior to transfer. The transferor and/or the transferee shall bear all costs of any Transfer.

6.5 The Parties agree not to Transfer their Shares to any person unless such transferee agrees to be bound by the terms of this Agreement.

6.6 All Adherence Agreements executed pursuant to this Clause shall be executed by the transferee or allottee and each Party.

7. CONFIDENTIALITY

7.1 Each Party agrees to keep any information received by it pursuant to this Agreement or relating to the Business as confidential and not (save with the relevant Party's consent or as may be required by Law or the rules of any regulatory authority or any stock exchange) disclose to any person such information.

7.2 Notwithstanding the foregoing, the Parties agree that the HarbourVest Entities may disclose to their limited partners and prospective limited partners (including any agents of such limited partners or prospective limited partners), clients and applicable governmental agencies (a) the name and address of the Company, (b) the capital commitment and the remaining capital commitment, (c) the net asset value of such HarbourVest Entity's interest in the Company, (d) the amount of distributions that have been made to such HarbourVest Entity by the Company and the amount of contributions that have been made by such HarbourVest Entity to the Company, (e) such ratios and performance information calculated by such HarbourVest Entity using the information in clauses (a) through (d) above, including the ratio of net asset value plus distributions to contributions (i.e., the "multiple") and such HarbourVest Entity's internal rate of return with respect to its investment in the Company, and (f) tax information with respect to the Company.

8. DIVIDENDS

8.1 The Company agrees that it shall not, and the Portfolio Manager agrees it shall not cause the Company to, make any dividends except pursuant to the section titled "Summary—Dividend Policy" of the Offering Memorandum.

9. TERM OF THE COMPANY

9.1 Each Party agrees to cause the winding up and dissolution of the Company after the ten year anniversary of the date hereof (the "Term"); provided that the Portfolio Manager, in its reasonable discretion, may postpone dissolution of the Company for up to 180 days in order to facilitate orderly liquidation of the investments; provided, further, that the Term shall be automatically extended for any amount of time for which the Investment Period may be extended.

9.2 Notwithstanding the foregoing, the Term may be extended with the consent of the Portfolio Manager and the Advisory Board for up to two successive periods of one year each.

10. ERISA MATTERS

10.1 The Portfolio Manager, the Company and each Member shall use their reasonable best efforts to conduct the affairs and operations of the Company so as to limit investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to less than the U.S. Plan Threshold. In the event the U.S. Plan Threshold is met or exceeded, the Portfolio Manager, on behalf of the Company, may require any Non-Qualified Holder that is a U.S. Plan Investor to sell or transfer their Shares to a person qualified to own the same that is not a U.S. Plan Investor within 30 days and within such 30 days and to provide the Company with satisfactory evidence of such sale or transfer such that such sale or transfer, together with other sale or transfers pursuant to this Clause, would result in the investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to be less than the U.S. Plan Threshold. Where the conditions above are not satisfied within 30 days after the serving of the notice to transfer, such Non-Qualified Holder will be deemed, upon the expiration of such 30 days, to have forfeited their Shares.

11. TAX MATTERS

11.1 PFIC. For each fiscal year of the Company, the Company will no later than 120 days after the end of such fiscal year, commencing with the first fiscal year for which the Company is determined to be a PFIC (a "passive foreign investment company"), furnish to each of the

HarbourVest Entities (x) all information necessary to permit such HarbourVest Entity or any of its partners to complete United States Internal Revenue Service Form 8621 with respect to their interests in the Company and (y) a PFIC Annual Information Statement under section 1295(b) of the Code with respect to the Company; provided that if the Company is unable to furnish such final information and Statement within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information and Statement on or before the 120<sup>th</sup> day after the end of such fiscal year.

- 11.2 CFC. The Company shall furnish to each of the HarbourVest Entities within 120 days after the end of each fiscal year of the Company, a United States Internal Revenue Service Form 5471 for such fiscal year, completed for all information concerning the Company required to be filed by such HarbourVest Entity or any of its partners (i.e., all portions applicable to the relevant category of filer other than page 1 items A-D and page 2 Schedule B), to the extent such Form 5471 is required to be filed by such HarbourVest Entity or any of its partners; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year.
- 11.3 Other Tax Information. The Company shall furnish to each of the HarbourVest Entities (a) within 120 days after the end of each fiscal year of the Company such other information reasonably requested by the HarbourVest Entities that any HarbourVest Entity may require in order for it or any of its partners to comply with its U.S. federal income tax reporting obligations with respect to its interest in the Company; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of such fiscal year and (b) promptly upon request such other information reasonably requested by such HarbourVest Entity in order to withhold tax or to file tax returns and reports or to furnish tax information to any of its partners with respect to the Company.
- 11.4 Withholding and Other Taxes. The Company will use reasonable best efforts to acquire investments that will not result in withholding or other taxes being imposed directly or indirectly on the Company by any jurisdiction with respect to income or distributions from such investments.

## 12. AMENDMENTS TO CERTAIN AGREEMENTS

- 12.1 The Portfolio Manager and the Company shall not amend or terminate, or agree to amend or terminate, the Memorandum or Articles of Incorporation of the Company or that certain Portfolio Management Agreement between the Portfolio Manager and the Company dated as of the date hereof (the "Management Agreement") without the consent of the Parties.
- 12.2 The Portfolio Manager agrees that it shall not assign its rights, duties and obligations under the Management Agreement without the consent of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company. Notwithstanding the foregoing, the Portfolio Manager may, without the consent of the Members, assign any of its rights or obligations under the Management Agreement to an Affiliate; provided that such Affiliate (A) has demonstrated ability, whether as an entity or by its personnel, to professionally and competently perform duties similar to those imposed upon the Portfolio Manager pursuant to the Management Agreement, (B) has the legal right and capacity to act as Portfolio Manager thereunder and (C) shall not cause the Company or the pool of collateral to become required to register under the provisions of the Investment Company Act and such action does not cause the company to be subject to tax in any jurisdiction outside of its jurisdiction of incorporation.
- 12.3 The Company agrees that it shall not hire any portfolio manager without the consent of the Parties and such new portfolio manager shall be required to join and abide by this Agreement.

## 13. FINANCIAL REPORTS

- 13.1 The books and records of account of the Company shall be audited as of the end of each fiscal year of the Company by a nationally recognized independent public accounting firm selected by

the Portfolio Manager that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules. During the Term, the Portfolio Manager or the Company shall prepare and mail, deliver by fax, email or other electronic means or otherwise make available a financial report (audited in the case of a report sent as of the end of a fiscal year and unaudited in the case of a report sent as of the end of a quarter) to each Member on or before the 120<sup>th</sup> day after the end of each fiscal year and the 45<sup>th</sup> day after the end of each of the first three quarters of each fiscal year, setting forth for such fiscal year or quarter (a) the assets and liabilities of the Company as of the end of such fiscal year or quarter; (b) the net profit or net loss of the Company for such fiscal year or quarter; and (c) such Member's closing capital account balance as of the end of such fiscal year or quarter; provided that if the Portfolio Manager or the Company is unable to furnish final information with respect to any of the above, then the Portfolio Manager or the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120<sup>th</sup> day after the end of each fiscal year and the 45<sup>th</sup> day after the end of the first three quarters of each fiscal year. On or before the 60<sup>th</sup> day after the end of each fiscal year, the Portfolio Manager or the Company shall provide to each Member an unaudited draft of the financial report for such fiscal year.

13.2 After the end of each fiscal year or quarter, the Portfolio Manager or the Company shall cause to be delivered to the Advisory Board a reasonably detailed summary of the expenses incurred by the Company during such period.

#### 14. TERMINATION AND LIQUIDATION

14.1 Save as provided for in Clause 13.2, this Agreement shall terminate:

14.1.1 when one Party holds all the Shares;

14.1.2 when a resolution is passed by the Company's Members or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, Members or other contributors; or

14.1.3 with the written consent of all the Parties.

14.2 The following provisions of this Agreement remain in full force after termination: Clause 1 (Interpretation), Clause 7 (Confidentiality), this Clause, Clause 14 (Whole Agreement), Clause 16 (Assignments), Clause 17 (Variation and Waiver), Clause 18 (Service of Notice), Clause 19 (General) and Clause 21 (Governing Law and Jurisdiction).

14.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties may have accrued under it.

14.4 Where the Company is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

14.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;

14.4.2 the Company shall not enter into any new contractual obligations;

14.4.3 the Company is dissolved and its assets are distributed as soon as practical; and

14.4.4 any other proprietary information belonging to or originating from a Party shall be returned to it by the other Parties.

15. WHOLE AGREEMENT

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.
- 15.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this Agreement or those documents.
- 15.3 Nothing in this Clause 14 operates to limit or exclude any liability for fraud.

16. STATUS OF AGREEMENT

- 16.1 Each Party shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement.
- 16.2 If any provision in the memorandum of incorporation of the Company or the Articles conflicts with any provision of this Agreement, the provisions of this Agreement shall prevail as between the Parties. Each of the Parties shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure the modification of the memorandum of association of the Company or the Articles (as the case may be) in order to eliminate the conflict, but this Agreement shall not itself constitute a modification of the memorandum of association of the Company or the Articles.

17. ASSIGNMENTS

Save as expressly permitted by this Agreement, no person may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it without the prior written consent of the Parties.

18. VARIATION AND WAIVER

- 18.1 A variation of this Agreement shall be in writing and signed by or on behalf of the Parties.
- 18.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 18.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

19. SERVICE OF NOTICE

- 19.1 Any notice required to be given by any of the Parties may be sent by post or facsimile to the address and facsimile number of the addressee as set out in this Agreement, in either case marked for the attention of the relevant person named below, or to such other address and/or facsimile number and/or marked for the attention of such other person as the addressee may from time to time have notified for the purposes of this Clause.

19.1.1 to the Company:  
Address:  
First Floor, Dorey Court, Admiral Park  
St Peter Port, Guernsey GY1 6HJ  
Channel Islands

19.1.2 to CLO Holdco:

Address:  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, TX 75201  
Attn: General Counsel  
Tel: +1 (972) 628-4100  
Email: Notices@highlandcapital.com

19.1.3 to any HarbourVest Entity:

Address:  
c/o HarbourVest Partners, LLC  
One Financial Center, 44th Floor  
Boston, MA 02111  
USA  
Attn: Michael Pugatch  
Tel: +1 (617) 348-3712  
F  
Email: mpugatch@harbourvest.com

19.1.4 to any other Party: by post or hand delivery only to the address specified in the register of members of the Company.

19.2 Communications sent by post shall be deemed to have been received 24 hours after posting. Communications sent by facsimile transmission shall be deemed to have been received at the time the transmission has been received by the addressee PROVIDED THAT if the facsimile transmission, where permitted, is received after 5.00pm or on a day which is not a Business Day, it shall be deemed to have been received 11.00am the Business Day following thereafter.

19.3 In proving service by post it shall only be necessary to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this Clause and in the case of facsimile transmission it shall be necessary to prove that the facsimile was duly transmitted to the correct number.

20. GENERAL

20.1 Each of the Parties hereby agree not to enter into or abide by any agreement whether written or oral with any one or more of the other Parties in respect of the voting of Shares or the submission of Member resolutions to any Members for voting by them, or otherwise to direct or influence, or attempt to direct or influence, the day-to-day management of the Company, either directly or indirectly, other than in order to comply with the other terms of this Agreement or the Articles. In this regard, each of the Parties agrees to not to direct or influence or to attempt to direct or influence any of the Directors through any employment relationship that the Directors may have outside of the Company other than in order to comply with the other terms of this Agreement or the Articles. Each of the Parties hereby agree that this provision shall continue to apply to them whether or not they are or remain a Member.

20.2 Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

20.3 The Parties are not in partnership with each other and there is no relationship of principal and agent between them.

20.4 All transactions entered into between any Party and the Company shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement, as may be agreed by the Parties and, in the absence of such agreement, on an arm's length basis.

20.5 Each Party shall at all times act in good faith towards the other Parties and shall use all reasonable endeavours to ensure that this Agreement is observed.

20.6 Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

20.7 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document. This Agreement may not be amended except with the consent of each Party.

21. STATUS OF AGREEMENT

21.1 The Parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this Agreement.

21.2 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the Parties.

22. GOVERNING LAW AND JURISDICTION

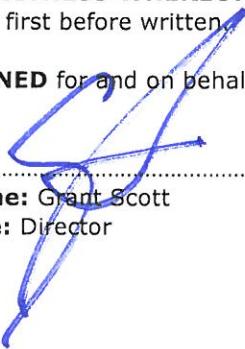
This Agreement shall be governed by and construed in accordance with the laws of the Island of Guernsey and each of the Parties submits to the non-exclusive jurisdiction of the Royal Courts of the Island of Guernsey.

[Signature Page Follows.]

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed the day and year first before written

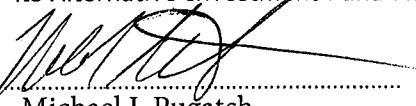
**SIGNED** for and on behalf of **CLO HOLDCO, LTD.**

By: .....  
Name: Grant Scott  
Title: Director



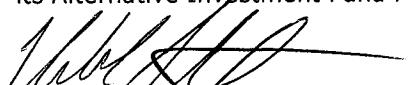
**SIGNED** for and on behalf of  
**HARBOURVEST DOVER STREET IX INVESTMENT L.P.**

By: HarbourVest Partners (Europe) Limited,  
its Alternative Investment Fund Manager

**By:**   
**Name:** Michael J. Pugatch  
**Title:** Authorized Person

**SIGNED** for and on behalf of  
**HARBOURVEST 2017 GLOBAL AIF L.P.**

By: HarbourVest Partners (Europe) Limited,  
its Alternative Investment Fund Manager

**By:**   
**Name:** Michael J. Pugatch  
**Title:** Authorized Person

**SIGNED** for and on behalf of  
**HARBOURVEST 2017 GLOBAL FUND L.P.**

By: HarbourVest 2017 Global Associates L.P.,  
its General Partner

By: HarbourVest GP LLC,  
its General Partner

By: HarbourVest Partners, LLC,  
its Managing Member

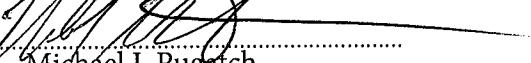
**By:**   
**Name:** Michael J. Pugatch  
**Title:** Managing Director

**SIGNED** for and on behalf of  
**HV INTERNATIONAL VIII SECONDARY L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

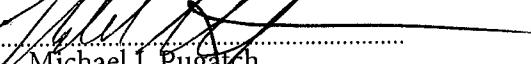
By: HarbourVest Partners, LLC  
Its Managing Member

**By:**   
**Name:** Michael J. Pugatch

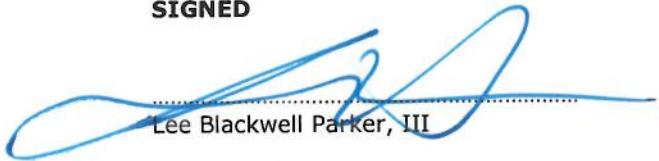
**Title:** Managing Director

**SIGNED** for and on behalf of  
**HARBOURVEST SKEW BASE AIF L.P.**

By: HarbourVest Partners (Europe) Limited,  
its Alternative Investment Fund Manager

**By:**   
**Name:** Michael J. Pugatch  
**Title:** Authorized Person

**SIGNED**

A handwritten signature in blue ink, appearing to read "Lee Blackwell Parker, III".

Lee Blackwell Parker, III

SIGNATURE PAGE TO MEMBERS' AGREEMENT

**APP\_0037**

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO LEE B. PARKER III, ACCT. # 3058311**

By:   
Name: Emmanuel Maac  
Title: Transaction Officer

Read and approved

  
X

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO HUNTER COVITZ, ACCT. # 1469811**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO JON POGLITSCH, ACCT. # 1470612**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO NEIL DESAI, ACCT. # 3059211**

By:.....  
Name:  
Title:

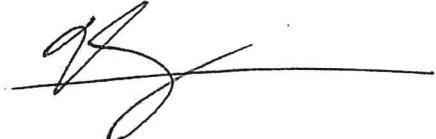
**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO LEE B. PARKER III, ACCT. # 3058311**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO HUNTER COVITZ, ACCT. # 1469811**

By:.....  
Name: *Emmanuel Maele*  
Title: *Transactions Supervisor*

*Read & Approved*



**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO JON POGLITSCH, ACCT. # 1470612**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO NEIL DESAI, ACCT. # 3059211**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO LEE B. PARKER III, ACCT. # 3058311**

**By:.....**  
**Name:**  
**Title:**

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO HUNTER COVITZ, ACCT. # 1469811**

**By:.....**  
**Name:**  
**Title:**

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO JON POGLITSCH, ACCT. # 1470612**

**By:**   
**Name:** Emanuel Magen  
**Title:** Transaction Supervisor

*Read and Approved:*

 11/7/17

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO NEIL DESAI, ACCT. # 3059211**

**By:.....**  
**Name:**  
**Title:**

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO LEE B. PARKER III, ACCT. # 3058311**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO HUNTER COVITZ, ACCT. # 1469811**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO JON POGLITSCH, ACCT. # 1470612**

By:.....  
Name:  
Title:

**SIGNED for and on behalf of  
QUEST IRA, INC.  
FBO NEIL DESAI, ACCT. # 3059211**

By:.....  
Name: *Emmanuel Maeet*  
Title: *Transaction Supervisor*

*Read and approved*

*Yvonne*

**SIGNED** for and on behalf of  
**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: Strand Advisors Inc.,  
its General Partner

By: .....  
**Name:** James Dondero  
**Title:** President



**SIGNED** for and on behalf of  
**HIGHLAND HCF ADVISOR, LTD.**

By:   
**Name:** James Dondero  
**Title:** President

**SIGNED** for and on behalf of  
**HIGHLAND CLO FUNDING, LTD.**

By:   
**Name:** William Scott  
**Title:** Director

SIGNATURE PAGE TO MEMBERS' AGREEMENT

SCHEDULE

Adherence Agreement

THIS ADHERENCE AGREEMENT is made on [ ] 200[ ]

BETWEEN:

- (1) [ ] of [ ] (the "Covenantor");
- (2) CLO HOLDCO, LTD. of [ ] (a "Member");
- (3) [ ] of [ ] (a "Member");
- (4) [ ] of [ ] (a "Member");
- (5) HIGHLAND CLO FUNDING, LTD., with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "Company")
- (6) HIGHLAND HCF ADVISOR, LTD., registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "Portfolio Manager").

RECI TAL

This Agreement is supplemental to the members agreement made on November 15 2017 between the Members, the Portfolio Manager and the Company (the "Members Agreement").

IT IS HEREBY AGREED as follows:

1. The Covenantor hereby confirms that he has been supplied with a copy of the Members Agreement and hereby covenants with each of the parties thereto to observe, perform and be bound by all the terms of the Members Agreement as if it were a party thereto.
2. Each of the other parties to the Members Agreement hereby covenants with the Covenantor that the Covenantor shall be entitled to the benefit of the terms of the Members Agreement as if he were a party thereto.
3. This Agreement shall be governed by and construed in accordance with Guernsey law.

IN WI TNESS of which this Agreement has been executed by the Covenantor and each of the parties to the Members Agreement on the date shown above.

## EXECUTION VERSION

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion” and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**EXECUTION VERSION**

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

**2. Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

**EXECUTION VERSION**

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

**EXECUTION VERSION****4. Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

**5. Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

**EXECUTION VERSION**

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
 Attention: Michael J. Pugatch  
 One Financial Center  
 Boston, MA 02111  
 Telephone No. 617-348-3712  
 E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
 Attention: M. Natasha Labovitz, Esq.  
 919 Third Avenue  
 New York, NY 10022  
 Telephone No. 212-909-6649  
 E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: James P. Seery, Jr.  
 Telephone No.: 972-628-4100  
 Facsimile No.: 972-628-4147  
 E-mail: jpseeryjr@gmail.com

**EXECUTION VERSION**

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**EXECUTION VERSION**

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

**EXECUTION VERSION**

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**EXECUTION VERSION**

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

## Exhibit A

**TRANSFER AGREEMENT  
FOR ORDINARY SHARES OF  
HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [REDACTED], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
- d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
- e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.

2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
- c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
- d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
- e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
- c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.

4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).

5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):

- a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
- b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

- c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.

6. Miscellaneous.

- a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

**TRANSFeree:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.      HV International VIII Secondary L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]



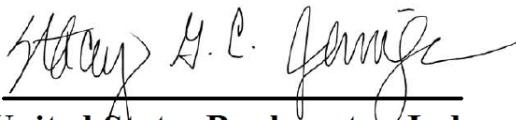
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 20, 2021

  
\_\_\_\_\_  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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In re: §  
§ Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> §  
§ Case No. 19-34054-sgj11  
Debtor. §  
§

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**ORDER APPROVING DEBTOR'S SETTLEMENT  
WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND  
AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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This matter having come before the Court on *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Motion”),<sup>2</sup> filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”); and this Court having considered (a) the

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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Motion; (b) the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1631] (the “Morris Declaration”), and the exhibits annexed thereto, including the Settlement Agreement attached as **Exhibit “1”** (the “Settlement Agreement”); (c) the arguments and law cited in the Motion; (d) *James Dondero's Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest* [Docket No. 1697] (the “Dondero Objection”), filed by James Dondero; (e) the *Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1706] (the “Trusts' Objection”), filed by the Dugaboy Investment Trust (“Dugaboy”) and Get Good Trust (“Get Good,” and together with Dugaboy, the “Trusts”); (f) *CLO Holdco's Objection to HarbourVest Settlement* [Docket No. 1707] (the “CLOH Objection” and collectively, with the Dondero Objection and the Trusts' Objection, the “Objections”), filed by CLO Holdco, Ltd.; (g) the *Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1731] (the “Debtor's Reply”), filed by the Debtor; (h) the *HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* [Docket No. 1734] (the “HarbourVest Reply”), filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”); (i) the testimonial and documentary evidence admitted into evidence during the hearing held on January 14, 2021 (the “Hearing”), including assessing the credibility of the witnesses; and (j) the

arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion are overruled.
3. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

4. All objections to the proofs of claim subject to the Motion<sup>3</sup> are overruled as moot in light of the Court's approval of the Settlement Agreement.

5. The Debtor, HarbourVest, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement without need of further approval or notice.

6. Pursuant to the express terms of the *Members Agreement Relating to the Company*, dated November 15, 2017, HarbourVest is authorized to transfer its interests in HCLOF to a wholly-owned and controlled subsidiary of the Debtor pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* without the need to obtain the consent of any party or to offer such interests first to any other investor in HCLOF.

7. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

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<sup>3</sup> This includes the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906].

## **EXHIBIT 1**

**EXECUTION VERSION****SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

**R E C I T A L S**

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion” and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**EXECUTION VERSION**

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

**2. Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

**EXECUTION VERSION**

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

**4. Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

**5. Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a "Support Termination Event"): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

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Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
One Financial Center  
Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com

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with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**EXECUTION VERSION**

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

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IT IS HEREBY AGREED.

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**EXECUTION VERSION**

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

## Exhibit A

**TRANSFER AGREEMENT  
FOR ORDINARY SHARES OF  
HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of January \_\_\_, 2021 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
- d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
- e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.

2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
- c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
- d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
- e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:

- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
- b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
- c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.

4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).

5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):

- a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
- b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

- c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.

6. Miscellaneous.

- a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

**TRANSFEREE:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

*[Signature Page to Transfer of Ordinary Shares of Highland CLO Funding, Ltd.]*

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	54,355,482.14	71.0096%
HarbourVest 2017 Global AIF L.P.	7,426,940.38	9.7025%
HarbourVest 2017 Global Fund L.P.	3,713,508.46	4.8513%
HV International VIII Secondary L.P.	9,946,780.11	12.9944%
HarbourVest Skew Base AIF L.P.	1,103,956.03	1.4422%